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ABSTRACT

Despite numerous laws prohibiting discrimination, millions of citizens are still denied true equality because of their race, sex, creed, or age. This booklet focuses on discrimination in employment, specifically on combating this form of discrimination through affirmative action plans. The guide lists the conditions which necessitate filing a plan; and the conditions of employment specified by federal regulations that should be included in a plan. The most important federal laws and regulations prohibiting discrimination that affect the operating policies of education institutions are cited, and sources of information are listed. A question-answer format is offered as a guide for developing an affirmative action plan. (Author/MLF)

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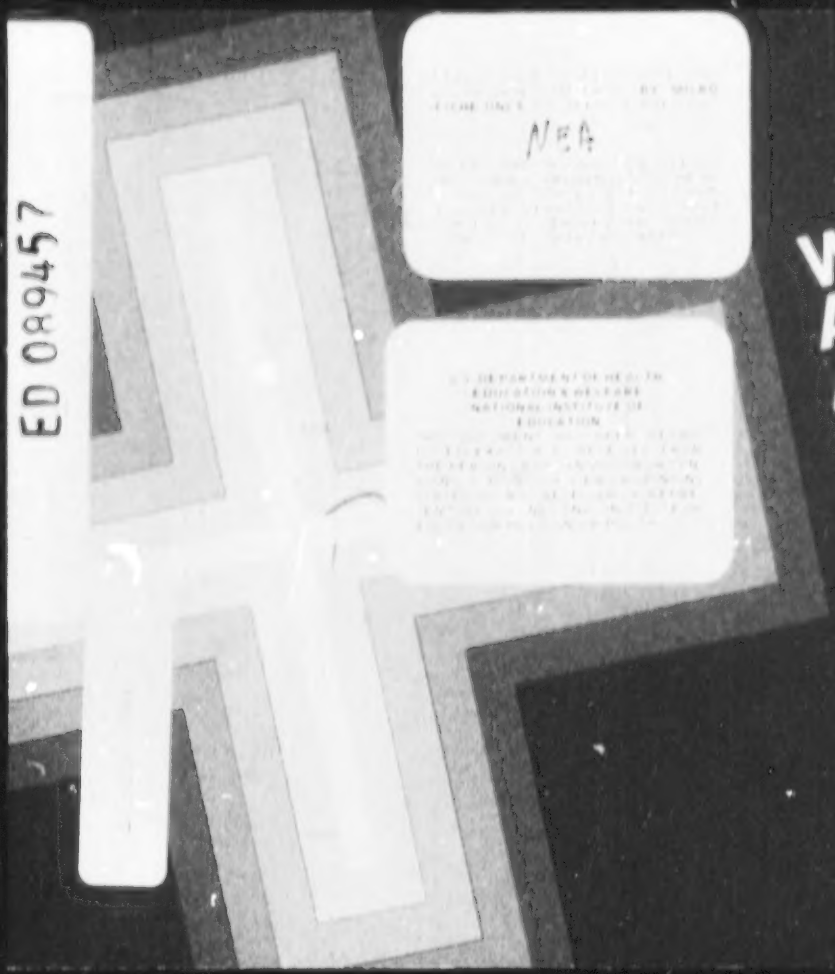

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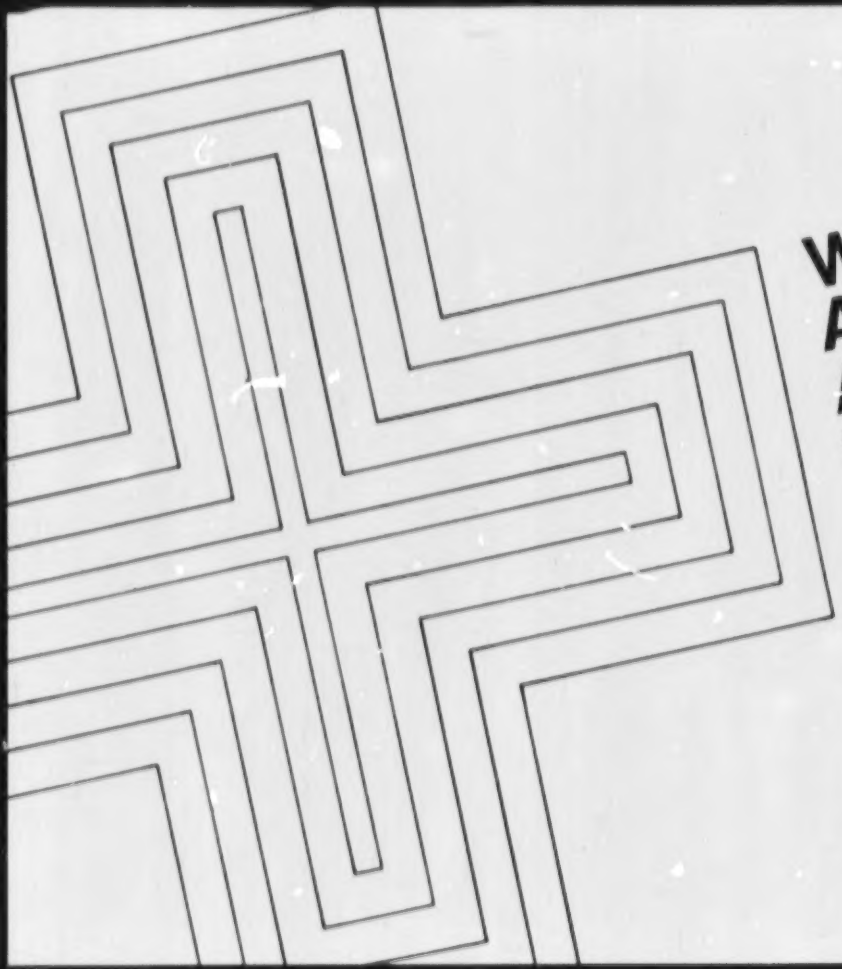
NATIONAL EDUCATION ASSOCIATION
WASHINGTON, DC



WHAT IS AFFIRMATIVE ACTION?

Combating Discrimination in Employment

NATIONAL EDUCATION ASSOCIATION
WASHINGTON, DC

INTRODUCTION

The American Dream of equal opportunity for all has not yet been realized. Despite numerous laws prohibiting discrimination, millions of our citizens are still denied true equality because of their race, sex, creed, or age.

This booklet focuses on discrimination in employment, specifically on combating this form of discrimination through affirmative action plans. An affirmative action plan is one way for employers to demonstrate commitment to the letter and spirit of the law by moving ahead to eliminate discrimination in their organizations or institutions. It is the written commitment of an employer or organization to eliminate discriminatory employment policies and practices and to actively remedy the current effects of past discrimination.

Institutions with federal contracts of $50,000 or more and 50 or more employees are required by Executive Order 11246 to file affirmative action plans. Institutions with contracts of $10,000 or more are covered by the provisions of this regulation but are not required to file plans.

Even when filing is not required by law, an affirmative action plan is a valuable policy and administrative tool for reducing job-related discrimination. Such a plan—

1. Demonstrates to the public a commitment to achieving equal opportunity.
2. Shows "good faith" in the event of possible charges or complaints of discrimination.
3. Clarifies the institution's policies for all employees and facilitates protection of individual rights.
4. Specifies actions that will carry out the letter and the spirit of the law.
5. Protects the employer and employees from unconscious discriminatory practices.

An affirmative action plan is a policy document that should be used to guide an organization's or institution's management and operations. It will also have impact on collective bargaining agreements with employee organizations. The plan is not a legal commitment except when required of a contractor or when ordered as a corrective measure for federal agency findings of discrimination.

There is no one best format or style, but any affirmative action plan should address itself at least to the following conditions of employment:[1]

- Recruitment, selection, layoff, discharge, and recall
- Opportunities for promotion
- Opportunities for in-service training
- Wages and salaries
- Sick leave time and pay
- Vacation time and pay
- Overtime work and pay
- Medical, hospital, life, and accident insurance
- Retirement plans and benefits
- Other benefits.

[1] These conditions of employment are specified by federal regulations.

Affirmative action plans usually include five sections:

I. Purpose or Intent

- What has been the employment policy of the institution?
- What change or reaffirmation is being made?
- What are the desired outcomes of the plan?

II. Analysis of Work Force Utilization

- What is the present profile of employees by race and sex (e.g., black men, white men, black women, white women), position, administrative unit, and average salary?
- What is the potential labor market or pool for each job category?
- What principles (seniority, layoffs, etc.) are to be followed in modifying the present profile?
- What is the expected number of vacancies in each category?

III. Problems and Methods for Solution

- Recruitment of staff
- Selection procedures
- Opportunities for promotion
- Training and career development opportunities
- Equalization of benefits
- Turnover and termination
- Grievance procedures.

IV. Carrying Out the Plan

- Who is assigned responsibility for implementation of the plan?
- What are the procedures for regular monitoring and updating of the plan?
- How will the plan be disseminated?
- What provision is made for continuing analysis of policy in light of changing conditions?
- What is the plan for disseminating progress reports?

V. Establishing Numerical Goals and Time Tables

- What are the specific numerical goals for job categories within administrative units?
- When will these goals be reached?

QUESTIONS AND ANSWERS

Are school systems required to develop affirmative action plans?

A school system is not required to file a plan unless (a) it is a subcontractor to the federal government with a contract of $50,000 or more, (b) a state law or regulation requires the filing of affirmative action plans, or (c) the system has been ordered to file a plan as a corrective measure for federal agency findings of discrimination. However, voluntary development of an affirmative action plan is a progressive employment practice. Legal prohibition of racially and sexually discriminatory practices covers nearly every public education program, so it is to the advantage of the school system to identify all possible sources of discrimination before charges may be filed against it.

Initiation of a plan may come from several sources—administrative procedures, collective bargaining negotiations or agreements, or actions of boards of education. For effective development and implementation of a plan, representatives of both employers and recognized employee groups should be involved. Where a collective bargaining agreement exists, the affirmative action plan must be consistent with the agreement. Since both employers and employee organizations may share legal responsibility for discriminatory practices, any differences should be negotiated.

Who formulates the affirmative action plan?

While the plan is an administrative guideline, it is essential that it have the endorsement and support of both management and employee organizations. Where collective bargaining agreements exist, the plan should be jointly developed and adopted by management and the recognized employee organization. Even though the plan may be written by a small representative group, it is vital that all individuals with responsibility for recruiting, selecting, and assigning employees understand the plan and its implications for their activities.

Who implements the plan?

The chief executive officer of an institution or school system must be responsible for administration of the plan. Any delegation of this responsibility should be specified in the plan, as should the responsibilities of all persons involved in the recruitment, selection, and promotion of employees.

In the administration of the plan, employees covered under collective bargaining agreements can use available grievance procedures as specified in the contract to ensure proper application and interpretation of the plan.

What are the responsibilities of employee organizations?

Any employee organization[2] employing 15 or more people is required to observe equal employment policies. A progressive employee organization should develop its own affirmative action plan to cover employment practices affecting its staff. It should also include provisions for the development of affirmative action plans in any contracts it negotiates on behalf of its members.

The law forbids collective bargaining agreements to have provisions discriminatory to racial or cultural minorities or women. Such provisions are most likely to appear in the seniority and fringe benefits clauses of an agreement. It is the challenge of an affirmative action plan to balance the rights of seniority and the employment rights of minorities and women. In the event that a collective bargaining agreement is determined to be discriminatory, both the employee organization and the employer may share in the responsibility.

[2] "Employee organization" means any organization of any kind in which employees participate and which exists for the purpose in whole or in part of dealing with employers concerning grievances, labor disputes, wages, hours, and other terms and conditions of employment.

How are goals developed?

First, the anticipated vacancies in each category of employees within administrative units should be projected. Next, some criteria for establishing goals should be specified. These may reflect the percentage of persons with legitimate qualifications (e.g., college graduation), the nature of the constituency served, the number of people available who have relevant experience, and the nature of the available employment pool.

It should be remembered that a numerical goal is a statement of intent and a criterion for determining progress, rather than an absolute requirement. A numerical goal should represent an estimate of what the work force would be if there were no discrimination. Further, it should reflect a realistic estimate of progress. While quotas are illegal, numerical goals have been upheld by courts. There is no intent to hire unqualified persons to fill positions. The intent is to ensure that, among qualified applicants, efforts are made to redress the effects of past discrimination.

What categories should be used in analysis of the work force?

The most common bases for discrimination are race, ethnic and cultural group, and sex. Therefore, an analysis should be made first of the number of females and racial and ethnic minority group persons in each job category within each administrative unit. Then the minority males and females in each category should be broken down into more specific groups, e.g., black males, Spanish-speaking males, black females, etc. During the analysis phase of the plan, minority group females are counted twice—as members of minority groups and as females. When numerical goals are established, minority group females may be considered part of either the minority work force or the female work force, but not both.

In addition to analyzing the composition of the work force by sex and racial and ethnic groups, it is helpful to study the average salary, amount of experience, distribution by administrative unit, and age of employees in each job category. These averages will be particularly valuable in considering issues of age discrimination and unequal pay for equal work, which also are prohibited by federal law.

How often should an affirmative action plan be reviewed?

It is wise to make provisions for yearly review by the institution's policy-making bodies and management. Progress reports should be made to employees and all interested persons on a regular basis.

What laws forbid discrimination on the basis of race or sex?

Many federal laws and regulations speak to discrimination on the basis of race or sex. The following are the most important ones that affect the operating policies of education institutions:

- **Title VI of the Civil Rights Act of 1964** prohibits discrimination on the grounds of race, color, or national origin by educational programs receiving federal funds. This legislation provides coverage for students and others. Employment policies and practices are exempted from coverage. It is administered by the Office for Civil Rights, U.S. Department of Health, Education, and Welfare, Washington, D.C. 20201, and regional HEW offices.

- **Title VII of the Civil Rights Act of 1964,** as amended by the Equal Employment Opportunity Act of 1972, prohibits discrimination in employment (including hiring, upgrading, salaries, fringe benefits, training, and other conditions of employment) on the basis of race, color, religion, national origin, or sex. It is administered by the Equal Employment Opportunity Commission, 1800 G Street, N.W., Washington, D.C. 20506, and regional EEOC offices.

- **Executive Order 11246,** as amended by 11375, prohibits discrimination in employment (including hiring, upgrading, salaries, fringe benefits, training, and other conditions of employment) on the basis of race, color, religion, national origin, or sex by institutions with federal contracts of over $10,000. It is administered by the Office for Civil Rights, U.S. Department of Health, Education, and Welfare, Washington, D.C. 20201, and regional HEW offices.

- **Equal Pay Act of 1963,** as amended by the Education Amendments of 1972 (Higher Education Act), prohibits discrimination in salaries (including almost all fringe benefits) on the basis of sex. It is administered by the Wage

and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210, and regional Wage and Hour Division Offices.

• **Title IX of the Education Amendments of 1972** (Higher Education Act) prohibits sex discrimination against students or others in education programs or activities. Patterned after Title VI of the Civil Rights Act, Title IX states, "No person . . . shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance." Unlike Title VI, Title IX also covers the *employment* practices of education institutions. It is administered by the Office for Civil Rights, U.S. Department of Health, Education, and Welfare, Washington, D.C. 20201, and regional HEW offices.

• **Title VII (Section 799A) and Title VIII (Section 845) of the Public Health Service Act,** as amended by the Comprehensive Health Manpower Training Act and the Nurse Training Amendments Act of 1971, prohibit (a) sexually discriminatory admission of students to federally assisted health personnel training programs, and (b) sexually discriminatory practices affecting employees who work directly with applicants to or students in such programs. It is administered by the Office for Civil Rights, U.S. Department of Health, Education, and Welfare, Washington, D.C. 20201, and regional HEW offices.

In addition, there are many state and local laws and regulations prohibiting discrimination. These should be reviewed with state and local authorities.

What recourse is available to the individual or group that believes an institution may be operating under discriminatory employment policies?

Complaint procedures are inherent within each of the federal laws and regulations listed above. Complaints may be filed by individuals or groups on their own behalf or on behalf of aggrieved employees or applicants. Procedures for filing complaints may be obtained from the specified agencies or from the resources listed on page 15.

In which aspects of employment is discrimination most common?

Recruiting and hiring. Word-of-mouth hiring practices frequently result in the exclusion of racial and ethnic minorities and women. The employer is expected to develop sources of recruiting that will address this problem. Advertisements of job openings may indicate that minorities and women are welcome to apply, but they may not state that *only* minorities or women will be considered for a specific position.

Salaries. Women and minorities cannot be paid less because of race or sex. Bona fide merit systems are allowed, if they do not contain consciously or unconsciously discriminatory provisions. Selection, upgrading, promoting, and training opportunities must be equalized. Sums may be set aside for "equity adjustment." In higher education, salary inequality is common throughout faculty and clerical positions, although many institutions have begun to take corrective actions. In elementary-secondary education, salary inequities are most likely to be found in the administrative, supervisory, clerical, and maintenance positions.

Maternity leave. Many challenges to mandatory maternity leave policies are now being litigated.[3] Title VII of the amended Civil Rights Act and Executive Order 11246 apply. Title VII guidelines make a distinction between child*bear*ing leave and child*rear*ing leave.

> Childbearing leave: It is advisable to follow strict Title VII sex discrimination guidelines, which apply to all institutions whether or not they receive federal aid. These guidelines require that the time when a

[3] The U.S. Supreme Court will consider the constitutionality of mandatory maternity leave provisions during its October 1973 term.

woman is physically unable to work be treated like all other temporary disabilities.

Childrearing leave: An EEOC decision upheld by the courts suggests that when childrearing leave is available, it should be available to both sexes.

Pensions and retirement plans. Some pension programs pay women less on a monthly basis because of actuarial differences. Under Executive Order 11246 and the Equal Pay Act, institutions with more than $10,000 in federal contracts are required either to make equal contributions to the retirement plan or to provide equal benefits. Under the stricter Title VII sex discrimination guidelines (April 5, 1972), equal benefits must be provided, regardless of the contribution.

Where may I obtain assistance?

When it is clear that a specific instance of race or sex discrimination is prohibited by a federal law or regulation, a complaint should be directed to the agency responsible for administering the act. Further information and assistance may be obtained from—

Teacher Rights
National Education Association
1201 16th Street, N.W.
Washington, D.C. 20036
(a teachers organization working to protect the human and civil rights of teachers and students)

Resource Center on Sex Roles in Education
National Foundation for the Improvement of Education
1156 15th Street, N.W., Suite 918
Washington, D.C. 20005
(a project working to document and assist efforts to combat sex role stereotyping and discrimination in schools)

and from a variety of other human and civil rights organizations. The following publications may also be helpful:

Implementing Regulations and Guidelines

TITLE VI OF THE CIVIL RIGHTS ACT OF 1964 (Write to Office for Civil Rights, Department of HEW, Washington, D.C. 20201, or regional HEW office.)

Policies on Elementary and Secondary School Compliance with Title VI of the Civil Rights Act of 1964 (March 1968)

Nondiscrimination in Federally-Assisted Programs (October 1967)

TITLE VII OF THE CIVIL RIGHTS ACT OF 1964 as amended by the Equal Employment Opportunity Act of 1972 (Write to Equal Employment Opportunity Commission, 1800 G Street, N.W., Washington, D.C. 20506, or regional EEOC office.)

Guidelines on Discrimination Because of Sex (April 1972)

Guidelines on Employee Selection Procedures (August 1970)

EXECUTIVE ORDER 11246 as amended by 11375 (Write to Office for Civil Rights, Department of HEW, Washington, D.C. 20201, or Office of Federal Contract Compliance, Employment Standards Administration, Department of Labor, Washington, D.C. 20210, or regional HEW or DOL office.)

Sex Discrimination Guidelines (June 1970)

Revised Order No. 4 (December 1971)

Obligations of Contractors and Subcontractors (May 1968)

HEW Higher Education Guidelines Executive Order 11246 (October 1972)

EQUAL PAY ACT OF 1963 as amended by the Education Amendments of 1972 (Higher Education Act) (Write to Wage and Hour Division, Employment Standards Administration, Department of Labor, Washington, D.C. 20210, or field, area, or regional Wage and Hour Division Office.)

Equal Pay for Equal Work—Interpretative Bulletin 800 (August 1971)

Extension of the Equal Pay Act of 1963—Fact Sheet (September 1972)

TITLE IX OF THE EDUCATION AMENDMENTS OF 1972 (Higher Education Act) (Write to Office for Civil Rights, Department of HEW, Washington, D.C. 20201, or regional HEW office.)

Memorandum to Presidents of Institutions of Higher Education Participating in Federal Assistance Programs (August 1972)

(Regulations being drafted)

TITLE VII (SECTION 799A) & TITLE VIII (SECTION 845) OF THE PUBLIC HEALTH SERVICE ACT as amended by the Comprehensive Health Manpower Act and the Nurse Training Amendments Act of 1971 (Write to Office for Civil Rights, Department of HEW, Washington, D.C. 20201, or regional HEW office.)

HEW Form No. 590—Assurance of Compliance (March 1972)

(Regulations being drafted)

This list prepared with the assistance of the Project on the Status and Education of Women, Association of American Colleges.

Other Publications

U.S. Civil Service Commission, Bureau of Intergovernmental Personnel Programs. *Equal Employment Opportunity in State and Local Governments: A Guide for Affirmative Action.* Washington, D.C.: Government Printing Office, 1972. 17 pp.

U.S. Commission on Civil Rights. *Statement of Affirmative Action for Equal Employment Opportunities by the United States Commission on Civil Rights.* Washington, D.C.: Government Printing Office, n.d. 20 pp.

U.S. Equal Employment Opportunity Commission, Office of Public Information. *Seventh Annual Report.* Washington, D.C.: Government Printing Office, 1973. 95 cents.

U.S. Equal Employment Opportunity Commission, Office of Voluntary Programs, Education Programs Division. *Affirmative Action and Equal Employment: A Guidebook for Employers.* (Single copies available free from EEOC, Washington, D.C.)

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